

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

D/F

FRANK H. FINKEL, JOSEPH A. FERRARA SR.,
THOMAS N. PIALI, MARK HERBST, DENISE
RICHARDSON, GARY LA BARBERA, THOMAS
GESUALDI, LOUIS BISIGNANO, DOMINICK
MARROCCO, and ANTHONY PIROZZI as Trustees
and Fiduciaries of the Local 282 Pension Trust Fund,

Plaintiffs,

-against-

FRED TODINO & SONS, INC.,

Defendant.

FEUERSTEIN, J.

X

ORDER
08 CV 4598(SJF)(WDW)

X

On November 13, 2008, plaintiffs initiated this action to collect withdrawal liability from defendant Fred Todino & Sons, Inc. ("Defendant") pursuant to the Employment Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1381 *et seq.* Defendant filed an answer on December 10, 2008. On April 1, 2010, plaintiffs served a motion for summary judgment, and on August 5, 2010, plaintiffs filed the motion unopposed. Pursuant to a referral, Magistrate Judge William D. Wall issued a Report and Recommendation on October 8, 2010 (the "Report"). After evaluating plaintiffs' motion on the merits, the Report recommended that plaintiffs' motion be granted. No objections have been filed to the Report. For the reasons stated herein, the Report is accepted in its entirety.

I. Discussion


Rule 72 of the Federal Rules of Civil Procedure permits magistrate judges to conduct proceedings on dispositive pretrial matters without the consent of the parties. Fed. R. Civ. P. 72(b). Any portion of a report and recommendation on dispositive matters, to which a timely objection has been made, is reviewed de novo. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The court, however, is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. See Thomas v. Arn, 474 U.S. 140, 150, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985). To accept the report and recommendation of a magistrate judge to which no timely objection has been made, the district judge need only be satisfied that there is no clear error on the face of the record. See Fed. R. Civ. P. 72(b); Baptichon v. Nevada State Bank, 304 F. Supp. 2d 451, 453 (E.D.N.Y. 2004), affd, 125 F. App'x. 374 (2d Cir. 2005); Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

No objections have been filed to Magistrate Judge Wall's Report to date. Upon review, the Court is satisfied that the Report is not facially erroneous. Accordingly, the Court accepts and adopts Magistrate Judge Wall's Report as an Order of the Court.

II. Conclusion

For the foregoing reasons, the Report is accepted in its entirety. Plaintiffs' motion for summary judgment is granted, and accordingly plaintiffs are awarded two hundred forty-five thousand and thirty-six dollars (\$245,036.00) in withdrawal liability payment, one hundred eighteen thousand five hundred forty-three dollars and seventy-two cents (\$118,543.72) in accrued interest from July 1, 2007 through April 1, 2010, daily interest of one hundred twenty dollars and eighty-four cents (\$120.84) from April 1, 2010 through entry of judgment, post-judgment interest pursuant to 28 U.S.C. §1961, liquidated damages in the amount of eighteen thousand five hundred forty-three dollars and seventy-two cents (\$118,543.72) plus one hundred twenty dollars and eighty-four cents (\$120.84) per day until entry of judgment, and attorneys fees in the amount of eighteen thousand nine hundred sixty dollars and ninety-five cents (\$18,960.95), and costs in the amount of eight hundred eighty-one dollars and sixteen cents (\$881.16).

SO ORDERED.



SANDRA J. FEUERSTEIN
United States District Judge

11/3/10

Dated: November 3, 2010
Central Islip, New York